

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY SCHRACK,

Plaintiff

v.

C-1-10-603

R+L CARRIERS, INC.,
et al.,

Defendants

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 64), defendants' objections (doc. no. 67) and plaintiff's response (doc. no. 68). The Magistrate Judge recommended that defendants' Motion for Summary Judgment (doc. no. 42) be granted as to all of plaintiff's claims against defendants R+L Carriers, Inc., all of plaintiff's claims against R+L Carriers and plaintiff's claims against R+L Carriers Shared Services LLC for age discrimination, interference with his rights under FMLA and failure to accommodate his disability. The Magistrate Judge also recommended that defendants' Motion for Summary Judgment

(doc. no. 42) be denied as to plaintiff's claims against R+L Carriers Shared Services LLC for retaliatory discharge under the FMLA and discriminatory discharge on account of his disability.

Neither party objects to the Magistrate Judge's recommendations that defendants R&L Carriers and R&L Carriers, Inc. be dismissed with prejudice; that plaintiff's age discrimination claims be dismissed with prejudice; that plaintiff's disability discrimination claims be dismissed with prejudice; that plaintiff's FMLA interference claim be dismissed with prejudice; that plaintiff's disability discrimination claim under a failure to accommodate theory be dismissed with prejudice; and that it cannot reasonably be disputed that plaintiff was terminated as part of the RIF and he was not replaced.

Remaining for consideration are defendant's objections to the recommendation that plaintiff has presented a genuine dispute of facts to justify jury consideration of his retaliatory discharge, disability discharge claims and whether defendant's stated reason, his lack of seniority, for selecting plaintiff for discharge was a pretext for intentional discrimination. The Magistrate Judge has discussed

sufficient circumstantial evidence from which a jury could reasonably conclude that plaintiff's use of FMLA leave was a motivating factor and/or his disability a "but for" reason for his selection for discharge.

The legal and factual issues involved in this case are not complex and they have been fully briefed by the parties. Pursuant to S.D. Ohio Civ. R. 7.1, the Court, therefore, finds that oral argument is not necessary and plaintiff's request for same is DENIED.

CONCLUSION

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE the Report and Recommendation of the United States Magistrate Judge (doc. no. 64). Defendants' Motion for Summary Judgment (doc. no. 42) is GRANTED as to all of plaintiff's claims against defendants, R+L Carriers, Inc. and R+L Carriers. Further, the Motion is GRANTED as to plaintiff's claims against R+L Carriers Shared Services

LLC for age discrimination, interference with his rights under the FMLA and failure to accommodate his disability. Defendants' Motion for Summary Judgment (doc. no. 42) is DENIED as to plaintiff's claims against R+L Carriers Shared Services LLC for retaliatory discharge under the FMLA and discriminatory discharge on account of his disability.

This case shall proceed to trial as previously scheduled by the Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court